No. 87-1185

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

UNITED MINE WORKERS OF AMERICA
1974 BENEFIT PLAN AND TRUST,
Petitioner,

v.

DISTRICT 29, UNITED MINE WORKERS OF AMERICA;
HERSCHEL HENSON,
Respondents.

UNITED MINE WORKERS OF AMERICA
1974 BENEFIT PLAN AND TRUST,
Petitioner,

v.

DISTRICT 29, UNITED MINE WORKERS OF AMERICA,
LOCAL UNION 5821, LOCAL UNION 6046,
GARLAND WALKUP, MADELINE R. THOMAS,
JOSEPH M. HANSHEW, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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RESPONDENTS' BRIEF IN OPPOSITION

BRADLEY J. PYLES
GRANT CRANDALL
CRANDALL & PYLES
P. O. Box 596
Logan, WV 25601
(304) 752-6000

CHARLES F. DONNELLY
DISTRICT 17, UNITED MINE WORKERS OF AMERICA
P. O. Box 1313
Charleston, WV 25325
(304) 346-0341

MICHAEL H. HOLLAND *
General Counsel
DEBORAH STERN
UNITED MINE WORKERS OF AMERICA
900 15th Street, N.W.
Washington, D.C. 20005
(202) 842-7330
Counsel for Respondents

* Counsel of Record

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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RESPONDENTS' BRIEF IN OPPOSITION

The petitioner seeks a writ of certiorari to the United States Court of Appeals for the Fourth Circuit, to review an adverse decision by that court, interpreting the terms of a collective bargaining agreement and an employee welfare benefit plan created and maintained pursuant to that agreement, in a manner with which the petitioner does not agree.

STATEMENT OF THE CASE

This case involves the interpretation of provisions of the National Bituminous Coal Wage Agreement, a national collective bargaining agreement periodically negotiated between the United Mine Workers of America and the Bituminous Coal Operators Association for more than 40 years, and the benefit plans established by those agreements for the purpose of providing health care benefits to retired and disabled coal miners, and their dependents.

The National Bituminous Coal Wage Agreement of 1946 created a welfare and retirement fund and a medical and hospital fund for coal miners. Those funds, through several collective bargaining agreements, eventually became the "United Mine Workers Welfare and Retirement Fund of 1950". From 1946 to 1974, the trustees of the fund, by resolution, established various medical and retirement benefits for UMWA miners, including, in 1948, a monthly pension of $100 for retired miners, payable "during the lifetime of the pensioner." Retired miners also received health benefits as long as they received their pensions, i.e., until their deaths. The Fund was supported by tonnage royalties on coal produced by signatory employers, and its beneficiaries received a health card from the Fund. Those benefits were never terminated for any class of eligible pensioners, although benefits were increased and extended to additional classes of beneficiaries over the years.

In 1974, the UMWA and BCOA agreed to continue the 1950 Fund in the form of four separate trusts. Two,

the 1950 Pension and Benefit Trusts, provided pension and welfare benefits, respectively, for present retirees, and the other two, the 1974 Pension Trust and 1974 Benefit Trust, provided similar benefits for those retiring in 1976 and after. The 1974 Benefit Plan and Trust also provided health care benefits to working miners. In the 1974 negotiations, the parties also agreed to extend lifetime health benefits, already provided to retired miners, to widows of retired miners, and to widows of retired or pension-eligible miners who would die in the future. *United Mine Workers Health and Retirement Funds v. Robinson*, 455 U.S. 562 (1982).[1]

The parties further agreed at that time to specify the nature and amount of pension and other benefits in the collective bargaining agreement itself. Each agreement since 1974 has included a "Summary" or "General Description" of plan benefits which states that a pensioner who retired prior to the agreement "will be entitled to retain his Health Services card for life" and that "his widow will retain a Health Services card until her death or remarriage." The phrase is repeated approximately nine time in each agreement, describing benefits for different categories of pensioners.

In late 1977, near the end of the 1974 agreement, as a result of rising health care costs and declining royalties due to wildcat strikes, the 1974 Benefit Plan began requiring beneficiaries to pay copayments and deductibles, and eventually, during the course of the lengthy contract strike, found it necessary to suspend benefits entirely for lack of funds. In negotiations for the 1978 successor agreement, the BCOA proposed that the 1974 Benefit Plan be completely eliminated and replaced by separate plans established by each signatory employer.

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[1] The issue in *Robinson* was the exclusion from that bargain of widows of miners who died while pension-eligible, but who had not retired, prior to the 1974 agreement.

A tentative contract including that provision, and making no provision for "orphaned" pensioners, was overwhelmingly rejected by the union's bargaining council. Union negotiators thereafter insisted on the retention of the 1974 Benefit Plan as a "safety net" for orphaned pensioners who might otherwise lose their benefits. The agreement finally adopted did retain the 1974 Benefit Plan for that purpose, and also included a guarantee of all four benefit plans by the signatory employers. Benefits were restored to previous levels, and beneficiaries were reimbursed for expenses incurred while benefits were suspended due to the insolvency of the Trust.

The 1978 agreement did not define the point at which the responsibility for providing benefits would pass from the employer to the 1974 Benefit Plan, except to provide that the 1974 Benefit Plan would provide benefits where the pensioner's last employer was "no longer in business." The trustees therefore developed their own definition, "Q & A H-16", to determine when that responsibility passed to the 1974 Benefit Plan, and when it remained with the employer or was transferred to a successor. The trustees defined "no longer in business" as, essentially, "no longer in the coal business." As to successors, they adopted a test drawn from decisions of this Court defining the circumstances in which a successor is responsible for the collective bargaining obligations of its predecessor.[2]

During the term of the 1978 agreement, the BCOA became concerned that the definition of "no longer in business" adopted by the trustees was susceptible to abuse by employers seeking to avoid their responsibilities to their pensioners by transferring that liability to the

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[2] *John Wiley & Sons, Inc. v. Livingstone*, 376 U.S. 543 (1964); *NLRB v. Burns*, 406 U.S. 272 (1972); *Howard Johnson Co. v. Detroit Local Joint Executive Board*, 417 U.S. 249 (1974).

1974 Benefit Plan.[3] In 1980, the parties agreed that the 1974 Benefit Plan should also provide benefits to laid off miners who would otherwise lose health care benefits because their employers were no longer in business. The BCOA proposed, and the Union readily accepted, a modification of the "no longer in business" designed to address that problem. Similar language was incorporated into the 1981 wage agreement. The change was completely noncontroversial, evoking not even a murmur of dissent from union negotiators or the union's membership.

During the term of the 1981 agreement, the trustees attempted to develop a formal interpretation of the new language. Although that effort was ultimately abandoned, they apparently did, over the dissent of the Chairman, Harrison Combs, adopt an approach by which the 1974 Benefit Trust refused to provide benefits to pensioners if their last employer had any assets, or had a solvent parent corporation or subsidiary, regardless of whether or not the employer or the related entity had any legal obligation to provide those benefits. They simply assumed that the question of liability was not relevant to the inquiry, despite the fact that for many pensioners, such an assumption rendered illusory the promise of health benefits "for life" repeated in four collective bargaining agreements since 1974, a promise that had been kept for more than thirty years.

The interpretation adopted by the trustees has led to a series of litigation culminating in the present case. The problem first became apparent in *District 17, United Mine Workers, et al. v. Allied Corporation*, 735 F.2d 121

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[3] By ceasing operations in the coal business, a solvent signatory employer could succeed in transferring its liability for pensioner health benefits to the 1974 Benefit Plan, although still signatory to an unexpired collective bargaining agreement, and thus both liable and able to pay those benefits.

(4th Cir. 1984), on rehearing *en banc*, 765 F.2d 412 (4th Cir.), *cert. denied*, 473 U.S. 905 (1985).

In *Allied*, the employer transferred its coal mining divisions to other corporations during the term of the 1978 agreement, completely ceased operations in the coal industry, and did not become signatory to the 1981 agreement. It continued to provide benefits to pensioners who retired from its coal mining operations for a period of time after the expiration of the 1978 agreement, and then terminated those benefits. The 1974 Benefit Plan declined to assume responsibility for the pensioners because the purchasers were Allied's successors. The union and the pensioners sued both Allied and the 1974 Benefit Plan, asserting that one or the other was obligated to provide benefits. The District Court held that Allied continued to bear responsibility for those benefits, because it breached a contractual obligation during the term of the 1978 agreement when it sold its coal divisions without requiring the purchasers to assume its obligations to the pensioners.

A panel of the Fourth Circuit ruled that Allied's obligation to provide benefits to its pensioners did not survive the expiration of the 1978 agreement, but that the 1974 Benefit Plan was obligated to provide those benefits once the employer was no longer obligated to do so. On rehearing, the Court of Appeals, sitting *en banc*, affirmed the judgment and reasoning of the District Court, holding that although Allied's contractual obligation to provide benefits terminated with the expiration of the 1978 agreement, Allied continued to be responsible for the benefits of its pensioners as a foreseeable consequence of its breach of that agreement during its term. The court thus did not reach the issue of the responsibility of the 1974 Benefit Plan, although indicating in a footnote that "it seems clear" that it would be responsible if none of the other parties were.

Negotiations for the 1984 agreement took place pending rehearing of *Allied* by the Fourth Circuit.[4] The union was concerned about the potential gap in coverage which might develop, in view of the position taken by the 1974 Benefit Trust that it was not responsible for the Allied pensioners even if Allied and its successors were determined to have no obligation to them. The union therefore sought to correct the erroneous approach of the trustees and to restore the 1974 Benefit Plan to its intended function as a "safety net" for orphaned pensioners who would otherwise lose their benefits. The BCOA declined to clarify the situation, and the issue was left for resolution in *Allied.* However, when the court decided *Allied* on the breach of contract issue, the issue of the 1974 Benefit Plan's obligation where there is no other responsible party remained unresolved.

The issue reappeared following the expiration of the 1981 agreement, when Royal Coal Company ceased operations in the coal industry, did not become signatory to the 1984 agreement, and terminated benefits to its pensioners. This litigation followed.

The District Court initially enjoined Royal from failing to provide benefits to its pensioners. On Royal's appeal, the Fourth Circuit vacated the preliminary injunction, holding that Royal's obligation did not survive the expiration of the 1981 agreement. *District 29, United Mine Workers v. Royal Coal Co.*, 768 F.2d 588 (4th Cir. 1985). As it had in *Allied*, the 1974 Benefit Plan took the position that although Royal was no longer obligated to provide benefits to its pensioners, and was itself financially unable to provide them even if obligated to do so, the Plan had no responsibility to those pensioners because Royal was a subsidiary of another corporation which was financially able, although also not obligated, to provide them.

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[4] The 1984 agreement was signed two days before oral argument in the Fourth Circuit's *en banc* rehearing.

On remand, the District Court reviewed the entire history of collective bargaining between the parties on this issue, as well as the collective bargaining agreement and plan documents, and concluded that the intent of the parties, as clearly manifested in those documents, was that pensioners and widows were to have a vested right to health benefits for life, that the 1974 Benefit Plan was retained for the specific purpose of ensuring that those benefits would be provided where there was no other responsible party, and that the trustees' interpretation of the plan documents was inconsistent with the intent of the parties and the agreement they reached, and was arbitrary and capricious. Accordingly, the court enjoined the 1974 Benefit Plan and Trust from refusing to provide benefits to the plaintiffs.[5]

SUMMARY OF ARGUMENT

The issue in this case is simply the proper construction of a collective bargaining agreement, the National Bituminous Coal Wage Agreement, and a benefit plan created and maintained pursuant to that agreement. Contrary to the petitioner's arguments, the District Court and the Court of Appeals have not interfered with the collective bargaining process, nor have they violated ERISA. They have merely examined the documents in question and the bargaining history of the parties, and determined that the 1974 Benefit Plan's interpretation of those documents was clearly erroneous, arbitrary, and capricious, and that it frustrated the clear intent of the parties and the fundamental purpose of the trust itself.

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[5] Two other district judges, in similar cases involving the same issue, independently arrived at the same conclusion. *Schifano, et al. v. United Mine Workers of America 1974 Benefit Plan and Trust,* No. 83-0264-C(K) (N.D.W.Va., 2/23/87) [Kidd., J.], and *Crockett v. Vecellio and Grogan, et al.,* No. 1:85-1448 (S.D.W.Va., 2/4/87), [Hallanan, J.]. Both cases are on appeal to the Fourth Circuit and have been placed in abeyance pending the final resolution of this case.

ARGUMENT

I. Petitioner Presents No Important Statutory Question; This Case Involves No More Than An Interpretation Of A Collective Bargaining Agreement With Which Petitioner Disagrees.

Neither the District Court nor the Court of Appeals has rewritten the agreement of the parties to the National Bituminous Coal Wage Agreement in this case. They have merely determined that the 1974 Benefit Plan's understanding of its responsibility in carrying out that agreement is clearly wrong, and its interpretation of the benefit plan in this instance is arbitrary, capricious and contrary to the intent of the parties. That intent is clearly expressed in each collective bargaining agreement since 1974, when they provided that a pensioner who retired prior to the effective date of the agreement "will be entitled to retain his Health Services card *for life*," and that his widow "will retain a Health Services card *until her death or remarriage*." There has been no substantive change in that language since the 1974 agreement. Widows have been entitled to lifetime benefits since 1974, and the provision of lifetime medical benefits to pensioners has been the practice in the coal industry for more than 35 years. This Court has recognized that vested retirement rights such as retiree medical benefits may not be altered without the pensioner's consent. *Allied Chemical and Alkali Workers v. Pittsburgh Plate Glass Co.*, 404 U.S. 157 (1971); *United Mine Workers Health and Retirement Funds v. Robinson*, 455 U.S. 562 (1982).

It is also well established that whether such benefits are vested depends upon the intent of the parties. *International Union, United Auto Workers v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983), *cert. denied*, 465 U.S. 1007 (1984). In *Yard-Man*, the Sixth Circuit held that life and health insurance benefits for retirees, similar to those in the present case, were intended to be lifetime benefits and were not extinguished by the expiration of

the contract. The court laid down the following principles for determining that intent:

> [T]he court should first look to the explicit language of the collective bargaining agreement for clear manifestations of intent [citation omitted]. The intended meaning of even the most explicit language can, of course, only be understood in light of the context which gave rise to its inclusion [citations omitted]. The court should also interpret each provision in question as part of the integrated whole. If possible, each provision should be construed consistently with the entire document and the relative positions and purposes of the parties [citations omitted]. As in all contracts, the collective bargaining agreement's terms must be construed so as to render none nugatory and avoid illusory promises [citations omitted].

716 F.2d at 1479-80.

In determining the intent of the parties, the Sixth Circuit has repeatedly emphasized two factors weighing in favor of finding that retiree benefits survived the expiration of the collective bargaining agreement. In *Policy v. Powell Pressed Steel*, 770 F.2d 609 (6th Cir. 1985), the court summarized the holding of *Yard-Man* as follows:

> First, this court recognized that normally retiree benefits are vested [citation omitted]. This is true because retirees, with respect to their benefits, are unprotected in the collective bargaining process. Upon expiration of a collective bargaining agreement, a union owes no duty to bargain for continued nonvested benefits for retirees. [citation omitted.] A union may choose to forego nonvested retiree benefits in future negotiations in favor of more compensation for active employees. The union may not, however, "bargain away retiree benefits which have already vested in particular individuals. Such rights, once vested upon an employee's retirement, are interminable and the employer's failure to provide them [is] actionable under § 301 by the retiree." [citations omitted.]

> Second, the *Yard-Man* court recognized that "retiree benefits are in a sense 'status' benefits which, as such, carry with them an inference that they continue so long as the prerequisite status is maintainted [citation omitted]."
>
> > "Thus, when the parties contract for benefits which accrue upon achievement of retiree status, *there is an inference that the parties likely intended those benefits to continue as long as the beneficiary remains a retiree* [citations omitted]" (emphasis in original).

770 F.2d at 613-14.

This approach has been widely adopted by the courts. See also, *Bower v. The Bunker Hill Co.*, 725 F.2d 1221 (9th Cir. 1984); *Local 150-A, UFCW v. Dubuque Packing Co.*, 756 F.2d 66 (8th Cir. 1985); *Weimer v. Kurz-Kasch, Inc.*, 773 F.2d 669 (6th Cir. 1985); *Upholsterer's International Union v. American Pad & Textile Company*, 372 F.2d 427 (6th Cir. 1967); *Hansen v. White Motor Corp.*, 788 F.2d 1186 (6th Cir. 1986).

It is difficult to perceive how the intent to create a vested, lifetime benefit could be much more clearly expressed than by saying that a pensioner "will be *entitled* to retain his Health Services card *for life*."[6] The District Court found that the parties intended to "provide the retired mine worker with health benefits as a vested, lifetime benefit," and the Court of Appeals agreed that the intent of the parties was "to guarantee their provision for life." The petitioner neither contends that this finding is wrong, nor does it argue that the Court of Appeals' earlier ruling that Royal is not obligated to provide those benefits was erroneous and that Royal is responsible for fulfilling the promise of lifetime benefits

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[6] Of the cases cited, and numerous other similar decisions, only *Policy v. Powell Pressed Steel Co.* involved comparably explicit language. The language in *Policy* provided that pensioners would receive coverage "during the lifetime of the pensioner."

to its pensioners. Petitioner simply contends that, whatever the consequences, it has no obligation to these pensioners and widows.

The necessary consequence of the petitioner's interpretation of the collective bargaining agreements and plan documents is that these pensioners have a vested right to lifetime health benefits, but no one is obligated to provide them with those benefits. This anomaly, while apparently insufficient to cause the trustees to reexamine their assumptions in interpreting the provisions of the plan, led the District Court to conclude that an examination of the bargaining history between the parties with respect to retiree benefits would be both appropriate and helpful.

In doing so, the District Court had before it an abundance of evidence, including the National Bituminous Coal Wage Agreements of 1946, 1947, 1948, 1949, 1950, 1974, 1978, 1981, and 1984, resolutions of the UMWA Welfare and Retirement Fund, by which its trustees provided health and pension benefits for retired miners, dated from 1946 to 1974, the benefit plans and summary plan descriptions for the 1974 Benefit Trust for the 1974, 1978, 1981, and 1984 wage agreements, public statements of the BCOA in connection with the 1978 negotiations, internal memoranda of the UMWA Health and Retirement Funds relating to the development by the trustees of interpretations of the "no longer in business" language after both the 1978 and 1981 agreements, minutes of meetings of the trustees, various other documents, and the testimony of numerous witnesses, including representatives of both the BCOA and UMWA in the 1978, 1981, and 1984 negotiations. The witnesses included all three trustees of the Funds during the term of the 1981 agreement, four members of the union's bargaining team during the 1978, 1981, and 1984 negotiations, including the union's president, general counsel, and benefits specialist in 1978 and 1981, and three members of the BCOA bargaining team in 1978, 1981, or 1984, including the chairman of the BCOA benefits subcommittee.

From that evidence, the District Court made a number of significant findings. The court found that pensioners had received health benefits from the Welfare and Retirement Fund "concurrent with their pension benefits, that is, for life" from 1946 to 1974, and that those benefits were never terminated or reduced, and did not terminate at the end of the collective bargaining agreement. A. 14a-15a. Beginning in 1974, when the benefits were first set out in the collective bargaining agreement itself, each successive agreement contained the promise of health benefits "until death" or "for life", and those provisions were never changed by the parties. A. 15a-16a. The court also found that the parties had clearly bargained in previous contracts for the extension of lifetime benefits to additional beneficiaries. A. 22a.

The court further found that in changing from a multiemployer plan to individual employer plans in the 1978 agreement, the parties intended to change "the method of providing those benefits", but "never intended to change the expectancy of the pensioners to receive those benefits." A. 18a. The court found the retention of the 1974 Benefit Trust as a "safety net" to be a further indication of the intent of the parties "to ensure that the pensioners' historical entitlement to lifetime benefits continued." A. 22a.

With respect to the 1981 negotiations and the change in the "no longer in business" language, the court noted that the change was completely noncontroversial, and that the intent of the change was to protect the 1974 Benefit Plan and Trust from manipulation by employers seeking to transfer their liabilities to the Trust, by requiring the pensioners to "exhaust their remedies against a signatory employer liable for their benefits", to exhaust the assets of that employer, and "to pursue any successor, assigns, related divisions, subsidiaries, or parent corporation, to the extent such entity might be liable for the benefits." A. 27a. The court found it inconceivable that the modification could have been intended or con-

templated to have the effect of leaving pensioners without benefits if their last employer failed to become signatory to a successor agreement after their retirement, in view of the testimony that the change was made "without even a suggestion of dissent from the Union bargaining counsel or membership." A. 27a.

When the parties agreed to change the method of providing benefits in 1978, the BCOA wanted a system of private insurance, and the UMWA insisted that pensioners' right to lifetime benefits be protected. The compromise they reached addressed both concerns, and the 1974 Benefit Plan was retained to provide a "safety net" for those pensioners. There was simply no evidence in the record suggesting that the safety net was intended to be only a partial one, or that the parties ever even contemplated or discussed the possibility that pensioners could lose their benefits under the circumstances of this case. The petitioner's suggestion that they intended or agreed to that result is nonsense. Both the District Court and the Court of Appeals rejected that contention:

> Neither the 1978 nor 1981 wage agreements, the trust documents incorporated therein, nor the bargaining history presented to the Court at trial, evidence an intent by the parties to reduce the level of benefits, to exclude or eliminate certain categories of beneficiaries from benefits, to cause the forfeiture or loss of benefits upon the occurrence of certain contingencies, or to change the nature of the benefits provided.

A. 23a. The Court of Appeals agreed, stating that "It is apparent from the record that the parties . . . intended to change the method of providing health benefits, but they did not intend to create new, latent loopholes to coverage." A. 6a.

The District Court concluded that the parties agreed to retain the 1974 Benefit Plan and Trust in the 1978 negotiations for the purpose of "securing the promise of lifetime benefits to pensioners who might become 'or-

phaned' by their last employer, and that those benefits were "to be continued either from the employer or successor or from the trust." A. 27a, 18a.

The issue in this case was simply the proper construction of the collective bargaining agreement and the benefit plan which is a part of that agreement. As the Court of Appeals concluded, "[t]o construe the contract to create no liability on the part of the 1974 Benefit Plan would have the effect of defeating the expressed intention to provide lifetime benefits." A. 6a. On the other hand,

> The 1974 Benefit Plan and Trust was established and continued in order to supply the health benefit needs of "orphaned" retirees, and thus construing the contract to impose that obligation on the trust fund, when the legal obligations of the former employer has terminated, can only further the purposes for which the trust fund was created. A. 7a.

What the District Court and the Court of Appeals have rejected in this case is not the agreement of the parties but the myopic determination of the 1974 Benefit Plan to interpret the "financially unable" phrase of the benefit plan as something more than a requirement that the retirees look first to the *liable* employer, and the arbitrary assumption that the parties deliberately intended and agreed to create a situation where the 1974 Benefit Plan has no responsibility to these pensioners whenever a parent exists, without regard to that parent's legal obligation to provide their benefits. While the parties to a collective bargaining agreement are free to negotiate terms that make no sense, there is no reason to assume that they did so in the absence of evidence to that effect. The Court of Appeals simply recognized that the 1974 Benefit Plan's "strict adherence to the literal terms in the agreement" leads to a result that "has the effect of defeating the expressed intention to provide lifetime benefits," and that its interpretation adopted by the

trustees flatly contradicts the primary purpose of the Trust. The court's refusal to permit that result is no threat to national labor policy.

The petitioner's predictions of the dire consequences of the Fourth Circuit's decision are equally unfounded. When the parties agreed to retain the 1974 Benefit Plan in the 1978 negotiations, they initially funded that plan by a contribution of 2 cents per hour worked by UMWA employees. The Plan accumulated so much money during the term of the 1978 agreement that the parties agreed to reduce the contribution rate to zero during the terms of both the 1981 and 1984 agreements. The assets produced by the 2 cent contribution rate during the three-year term of the 1978 agreement have been sufficient to provide benefits to all "orphaned" pensioners for a period of ten years, and even with the petitioner's worst-case projection, would last almost another two years.[7] Although there has been a decline in the assets of the Trust over the past two years, the 1974 Benefit Plan still has assets in excess of $27 million, and much of the decline has been due to factors other than the inclusion of additional beneficiaries.

Moreover, recognizing the need for additional funding for the 1974 Benefit Plan, the United Mine Workers and the Bituminous Coal Operators Association recently negotiated a new collective bargaining agreement, the National Bituminous Coal Wage Agreement of 1988. That agreement provides, for the first time since the 1978 agreement, new contributions to the 1974 Benefit Plan and Trust at the rate of 8 cents per hour, four times the rate in the 1978 agreement. The parties also took further steps to protect the solvency of the Trust and to

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[7] Petitioner's estimate of 6,000 additional beneficiaries is highly inflated. LTV Corporation, for example, is in bankruptcy, but has continued to provide benefits for its pensioners pursuant to interim legislation or agreements with unions representing its employees, including the UMWA.

prevent responsible employers from seeking to shift their obligations to the 1974 Benefit Plan, by creating a system of withdrawal liability for health benefit obligations similar to the statutory provisions of ERISA.

In addition, each agreement since 1978 has included a guarantee by the BCOA and signatory employers of the benefits to be provided by all four trusts, including the 1974 Benefit Plan, and the signatory employers are required to provide whatever additional contributions are necessary to fund the promised benefits. The 1988 agreement extends that guarantee to 1993. Both the existing beneficiaries and those for whom the 1974 Benefit Plan has denied responsibility will receive the benefits they were promised.

II. The Decision Of The Court Of Appeals Does Not Violate Sections 402 And 404(a)(1)(D) Of ERISA.

The petitioner's assertion that the decision of the Court of Appeals conflicts with ERISA's requirement that benefit plans be established and maintained pursuant to a written document, and that plan fiduciaries discharge their duties in accordance with the documents and instruments governing the plan, fails for much the same reason as its contention that the court improperly interfered with the collective bargaining process. The collective bargaining agreement which creates the benefit plan is part of the "documents and instruments governing the plan", and where the plan fiduciaries insist on interpreting a provision of the benefit plan in a manner which directly conflicts with the clear intent of the parties, that decision is not insulated from judicial review simply because the trustees insist that their interpretation of the plan is the only interpretation conceivable.

Where the trustees' interpretation of the plan documents is arbitrary and capricious, the court is justified in rejecting it. In reviewing that interpretation, the

Court should consider whether the trustees' interpretation is contrary to the language of the provision in question or renders provisions of the plan superfluous, whether it is consistent with the plan's purposes, whether it is consistent with the provision's purpose, and whether it is consistent with prior similar interpretations. *Donovan v. Carlough*, 576 F. Supp. 245, supplemented at 581 F. Supp. 271 (D.C. D.C. 1984), *aff'd*, 753 F.2d 166 (D.C. Cir. 1985). The District Court and the Court of Appeals properly concluded that the trustees' interpretation was contrary both to the purpose of the trust, to provide for "orphaned" pensioners, and to the purpose of the "no longer in business" provision, which existed to protect the 1974 Benefit Plan from efforts by responsible employers to dump their obligations on the Plan, and not for the purpose of causing pensioners to forfeit their benefits, and that it rendered illusory the clear promise of lifetime benefits contained in the collective bargaining agreement.

The cases cited by the petitioner are completely inapplicable to this situation. This case does not involve an alleged oral modification of a written plan, as did *Nachwalter v. Christie*, 305 F.2d 956 (11th Cir. 1986), and *Northwest Administrators, Inc. v. B.V. and B.R., Inc.*, 813 F.2d 223 (9th Cir. 1987). Nor does it involve the ignoring of an unambiguous term of a benefit plan in the interest of some general principle of equity, as in *Cummings v. Briggs and Stratton Retirement Plan*, 797 F.2d 383 (7th Cir. 1986). Rather, it involves only a determination that the trustees' interpretation of ambiguous language in the benefit plan was contrary to the very clear language in the collective bargaining agreement and to the fundamental purposes of the plan itself. That determination advances rather than threatens the policy goals of ERISA.

CONCLUSION

Notwithstanding the petitioner's attempt to frame the issue in this case as an invasion by the Court of Appeals of the processes of free collective bargaining and fiduciary duty, it is simply a disagreement over the interpretation of the provisions of a single collective bargaining agreement and the benefit plan it established. The petitioner remains convinced that its interpretation was correct. Neither the District Court nor the Court of Appeals was persuaded. Their determination was clearly correct, and the petition for certiorari should be denied.

Respectfully submitted,

BRADLEY J. PYLES
GRANT CRANDALL
CRANDALL & PYLES
P. O. Box 596
Logan, WV 25601
(304) 752-6000

CHARLES F. DONNELLY
DISTRICT 17, UNITED MINE WORKERS OF AMERICA
P. O. Box 1313
Charleston, WV 25325
(304) 346-0341

MICHAEL H. HOLLAND *
General Counsel
DEBORAH STERN
UNITED MINE WORKERS OF AMERICA
900 15th Street, N.W.
Washington, D.C. 20005
(202) 842-7330
Counsel for Respondents

* Counsel of Record